58577-1

58577-1

81311-6

No. 58577-1-I

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

HEATHER AND CHAD THOMPSON,

Respondents,

v.

PAUL AND JEANNINE HANSON,

Appellants.

APPELLANTS' REPLY BRIEF

Chase C. Alvord (WSBA #26080)
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
206.682.5600

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATUTES

I. INTRODUCTION

The Thompsons make reference throughout their response brief to "equity" as a justification for the entry of a personal judgment against the Hansons, although they never specify what equitable principal they are relying upon. But what is inequitable and unjust in this case is the entry of a personal judgment against the Hansons of nearly $90,000 for a claim Judge Mattson, in the previous case, ruled they were not personally liable for.

In the December 2003 trial in which Mr. Hanson represented himself and the Corporation *pro se*, Judge Mattson entered a judgment against the Corporation for the principal amount of $30,010.00, consisting of $10,000 for refund of a construction retainer and $20,010 in expectation damages, but specifically did not enter judgment against the Hansons personally. The Thompsons now seek over $90,000 from the Hansons on a claim they were previously adjudged to have no liability for, all because the Corporation – with no intent to hinder, delay, or defraud any creditors – refinanced its construction loan on two parcels over three years before the Thompsons obtained their judgment against the Corporation. That is a result which would be inequitable and unjust. The remedial scheme of the UFTA, Washington case law, and "equity," all recognize this and afford protection to those in the Hansons' position.

II. REPLY TO RESPONDENTS' STATEMENT OF THE CASE

Assertions and statements of counsel are not evidence. *State v. Howard*, 52 Wn. App. 12 (1988). The Thompsons' brief, like their trial presentation, is heavy on assertions, and light on citations to relevant evidence supporting their claims. For instance, the Thompsons confidently assert that "In the Spring and Summer of 2000, the Company was collapsing as it was under constant assault from the creditors if [sic] could not pay. During the time period pertinent to the present lawsuit i.e., the spring and summer of 2000, Paul V. Hanson, Inc., was clearly insolvent and in a precarious financial position." *Resp. Br. at 3.*

But the record citations offered to support this statement simply do not do so. First, the record citation to trial exhibits 4-5 offer no support for the statement; they are simply the closing statements for the refinance of Lots 66 and 68. Second, the record citation to the entirety of Mr. Hanson's examination by Mr. Cloud establishes only (1) prior to 9/13/2000 the Company had a judgment lien held by Emerald Services for $3,038.50;[1] (2) on 9/13/2000 the Company still owned Lot 69 and sold it over a year later near the end of 2001;[2] (3) on 9/13/2000 the Company owned Lot 62, which it sold a few months later for $235,000 and in doing

[1] RP (March 21, 2006), pp. 60-61, Ex. 5.

[2] RP (March 21, 2006), p. 67.

so satisfied liens of $195,000;[3] (4) on 9/13/2000, Washington State Utilities had a secured lien on the 20-lot Blueberry Farm development;[4] (5) on 9/31/00 the Company had a contract to build a custom home on Lot 61.[5] The remainder of Mr. Cloud's examination focused solely on events occurring in 2001 and beyond, which says nothing about the Company's assets and liabilities on 9/13/00.

The remainder of the Thompsons' statement of the case relies for support on the trial court's finding of facts which are the very findings of fact under review in this appeal. The Thompsons correctly state that resolution of this case depends "upon a presentation of the financial status of the company on or about September 13, 2000." *Resp. Br. at 5.* But the evidence they rely upon concerns almost exclusively the financial status of the company in the years following that date, not the financial status of the Company on the relevant date in question. The Thompsons' entire case, and all of their evidence, is based upon hindsight.

The Thompsons' effort to cite to evidence of the Corporation's debts existing on 9/13/2000 establishes only that the corporation had several secured debts existing on that date. But, as the Hansons pointed out in their brief, the UFTA solvency analysis is not concerned with

---

[3] RP (March 21, 2006), pp. 72-73; Ex. 26.

[4] RP (March 21, 2006), pp. 74-76.

[5] RP (March 21, 2006), pp. 80-81.

secured debts. For instance, the Thompsons say that the corporation owed back taxes and cited to the closing statement for Lot 62. *Resp. Br. at 6.* These are secured debts. They then say the company owed subcontractors. *Id.* But the record citation supporting this statement shows only that the settlement statement included payoff of a minimal judgment lien to Emerald Services, which is, again, a secured debt. The Thompsons' reference to the construction lien filed by Washington Utilities is likewise a reference to a secured debt. [6] *Id.* The Thompsons state that "The company was in default of its construction loan on Lot 62" but do not cite to any evidence in the record supporting this statement. Indeed there is none. The Thompsons state that the company "was in default of its construction loans on Lots 66 and Lots 68" but the exhibit they cite to – Exhibit 26 – establishes nothing of the sort.

Just because the Thompsons or their attorney assert something does not make it so. For instance, the Thompsons declare unabashedly that "Mr. Hanson's testimony was repeatedly impeached by his own testimony." *Resp. Br. at 15.* But they never cite to the place in the record where such impeachment supposedly occurred, because it simply did not. The Thompsons may not like Mr. Hanson's testimony, and may disagree

[6] Under RCW 60.04.061, mechanic's liens, once properly recorded, relate back to the date "of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant." The Thompsons' attorney asserted at trial that this provision resulted in a secured debt. RP (March 21, 2006), p. 147.

with it, but that does not mean they impeached him. The Thompsons' assertions are not supported by the evidence, and neither is the trial court's judgment.

III. REPLY TO RESPONDENTS' ARGUMENT

A. The Thompsons' Response Does Not Adequately Address The Operation Of The *Deyong/Park Hill* Holdings and The UFTA'S Protection Of Transferee Provisions

In their discussion of the *Deyong* case, the Thompsons assert that that case "does not limit the personal liability remedy to situations where actual intent has been demonstrated." *Resp. Br. at 19*. But here is what the *Deyong* Court itself actually said about that:

> **We hold** that a creditor may recover a money judgment from a transferee of a fraudulent conveyance who has knowingly accepted the property **with an intent to assist the debtor in evading the creditor** and has placed the property beyond the creditor's reach.

47 Wn. App. at 347.

Intent to defraud coupled with the placing of the assets beyond the creditor's reach are the only "certain conditions" under which the *Deyong* Court would allow entry of a personal judgment. Neither of these conditions exists here. First, the trial court's finding that there was no actual intent to hinder, delay, or defraud the Thompsons is a verity on appeal. Second, property sufficient to satisfy their claim was never placed beyond the reach of the Thompsons; they simply made no effort to protect

themselves. Equity helps only those who take action, not those who sleep on their rights. *Leschner v. Dept. of Labor and Indus.*, 27 Wn.2d 911, 927-928, 184 P.2d 113 (1947)("The principle embodied in this maxim operates throughout the entire remedial portion of equity jurisprudence, as furnishing a most important rule controlling and restraining the courts in the administration of all kinds of reliefs").

After the Corporation transferred Lots 66 and 68 to the Hanson on 9/13/00 as part of the construction loan refinancing, the Corporation still owned Lots 62 and 69 in Lakeland Hills, still owned the 20-lot subdivision Blueberry Farm, still had a right to payment under a custom construction contract for Lot 61 in Lakeland Hills. Yet the Thompsons took no action to secure their claim against these assets through available pre-judgment remedies. Moreover, they sued the Hansons personally in the first case when the Hansons owned Lots 66 and 68 and made no effort to attach these properties. Third, even after filing this action, the Thompsons made no effort to secure rights in Lot 66, which the Hansons still owned. The only thing which placed the Corporation's assets beyond the reach of the Thompsons is their own inaction.

Whatever ambiguity the Thompsons are attempting to derive from the *Deyong* case was wiped away by the court's holding in *Park Hill v. Sharp*, 60 Wn. App. 283, 803 P.2d 326 (1991). The following holding of *Park Hill* is dispositive:

> The UFTA acknowledges the remedy set forth in *Deyong* and the principles of equity supplement its provisions. RCW 19.40.081(b); RCW 19.40.902. Therefore, under the UFTA and the UFCA, a defrauded creditor is entitled to a money judgment against a transferee if the *Deyong* requirements are met, or equitable principles otherwise compel such relief.
>
> *The trial court found that the Chambers children had no actual intent to defraud, hinder or delay the creditors of Mr. and Mrs. Chambers.* The Sharps to not assign error to this finding. An unchallenged fining is a verity on appeal. [citation omitted]. *Therefore, even if the transfer were fraudulent, the remedy prayed for by the Sharps is unavailable.*

60 Wn. App. at 288. The Thompsons' attacks on *Deyong* and *Park Hill* are misconceived. Regarding *Deyong*, they seek to limit its holding because it cited *Damazo v. Wahby*, 305 A.2d 138 (Md. 1973), in its analysis. *Damazo*, while not clear on the question, did not require actual intent for recovery. *Id.* at 142. However, Plaintiffs fail to mention that *Deyong* favorably discussed two other cases in the same paragraph as *Damazo*, both of which unequivocally required a finding of actual intent to support a personal judgment against a transferee. *See Flowers and Sons Dev. Corp. v. Municipal Court*, 86 Cal. App. 3d 818, 825 (1978) (requiring transferee's knowing participation in the fraudulent conveyance with the intention of defrauding creditors); *State v. Nashville Trust Co.*, 190 S.W.2d 785 (Tenn. App. 1945) (requiring transferee's participation in

the fraud); *see also Deyong*, 47 Wn. App. at 346-47 (discussing cases). The holding in *Deyong* immediately followed its discussion of these cases.

The Thompsons seek to overcome the direct applicability of the *Deyong/Park Hill* holdings by reference to the "catchall" provision in RCW 19.40.**071**, regarding the availability of "any other relief the circumstances may require" subject to "applicable principles of equity." The Thompsons do not identify any particular principles of equity applicable to this case. In contrast, the Hansons have demonstrated that the Thompsons did nothing to protect themselves for nearly four years. More importantly, no Washington case has used the "catchall" provision to change the *Deyong* and *Park Hill* requirement of actual intent. In fact, the "catchall" provision seemingly only expands RCW 19.40.**071**'s equitable remedies for a creditor, which include injunctive relief and the appointment of a receiver.

In support of their reliance on RCW 19.40.**071**, the Thompsons cite to a Florida case that does not discuss transferees, but rather notes that "a plaintiff may recover money damages against the transferor under the so-called catchall provision." *Hansard Constr. v. Rite Aid of Florida, Inc.*, 783 So.2d 307, 309 (Fla. Dist. Ct. 2001) (emphasis added). The other case the Thompsons rely upon is *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995). *Scholes*, in addition to being in conflict with *Deyong/Park Hill*, is not on point because the transfers at issue were gifts to a charity, which, as the

court discussed, lacked the consideration of a mutual exchange. *Id.* at 759. Here, the Hansons gave value in exchange for the transfers by assuming and satisfying the Corporation's debt. As a result, at a minimum, they are therefore entitled to avail themselves of the UFTA's offset provision in RCW 19.40.**081**.

RCW 19.40.**071(a)** expressly states that it is "subject to the limitations in RCW 19.40.**081**." One of the express limitations of RCW 19.40.**081** is that transferees who do not have actual intent to hinder, delay or defraud creditors are entitled to offset any judgment by the amount of value given for the transfer, even if the amount of such value is not reasonably equivalent to the value of the transfer. *RCW 19.40.081(d)(3).* Thus, even if this Court were to follow the dicta in *Eagle Pacific Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 934 P.2d 715 (1997), questioning *Park Hill's* application of the *Deyong* requirements to the UFTA, the result would be no different in this case because of the offset afforded by RCW 19.40.**081(d)(3)**.

RCW 19.40.**081(b)** and **(d)** are, essentially, the statutory implementation of the *Deyong/Park Hill* holdings. Subsection (b) provides that judgment may be entered against the first transferee of a voidable transfer up to the amount of the creditor's claim, or the value of the asset transferred, whichever is less. Subsection (d), however, gives a good-faith transferee a reduction in the amount of the liability on the

judgment "to the extent of the value given the debtor for the transfer." In other words, while a transfer may be voidable on the basis of constructive fraud because of a lack of reasonably equivalent value or insolvency, a good faith transferee – one who, a la *Park Hill*, did not accept the transfer with the actual intent of assisting the debtor in hindering, delaying, or defrauding a creditor – is nevertheless entitled to reduce any money judgment by the amount of the value that was given. This outcome is confirmed by the Prefatory Note the UFTA, which states that "A good faith transferee or obligee who has given less than a reasonable equivalent is nevertheless allowed a reduction in liability to the extent of the value given."

In this case the Hansons gave the Corporation "value" of over $330,000.00 in debt satisfaction in exchange for Lots 66 and 68.[7] Thus, even if the Thompsons had proved a constructively fraudulent transfer they are not entitled to a money judgment because the amount of the Hansons' statutory offset significantly exceeds the amount of the Thompsons' claim

[7] Exs. 4-5.

B. The Hansons' Assumption And Satisfaction Of The Corporation's Antecedent Debt Is Undoubtedly "Value" Under The UFTA; The *Clearwater* Case The Thompsons Rely Upon Did Not Involve The Satisfaction of an Antecedent Debt

RCW 19.40.**081(d)(3)** entitles the Hansons to an offset in the amount of the "value" they gave the Corporation for the transfer of Lots 66 and 68. The UFTA defines "value" as including satisfaction of an antecedent debt "in exchange for" the transfer. *RCW 19.40.031.* The Thompsons assert that the refinancing of the debt on Lots 66 and 68 did not constitute value for purposes of the offset.

In exchange for conveying Lots 66 and 68 to the Hansons, the Corporation was relieved of indebtedness totaling over $330,000. The Thompsons' assertion that this does not constitute value under the UFTA is contrary to both the statutory definition and case law. *RCW 19.40.**031(a)***; *see, Ming Properties v. Stardust Marine*, 741 So.2d 554, 556 (Fla. Dist. Ct. App., 1999)("[the transferee] refinanced the mortgage and thus relieved the [transferor] from their burden of debt. Section 726.104(1) [Florida's version of RCW 19.40.031(a)] states that "[v]alue is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred *or an antecedent debt is secured or satisfied*" . . . [the transferee] assumed and satisfied the [transferor's] debt. This assumption and satisfaction must be considered as valuable consideration, pursuant to the statute.")(italics in original); *see, also Moeller v. Columbia Producers, Inc.*, 14 Wn. App. 451, 452, 542 P.2d 791

(1975)(assumption and satisfaction of debt equals consideration under UFCA).

The fact that the loan for Lot 66 did not fund for several months after 9/13/00 is irrelevant to whether the refinancing was in exchange for the transfer. That the transfer of both lots was for the purpose of refinancing was not challenged at trial, and the testimony was un-contradicted on this point. Furthermore, RCW 19.40.031(c) states that a transfer is made for value as long as the transaction is intended to be contemporaneous and was in fact substantially contemporaneous. More importantly, the trial court specifically found that the transfer of Lots 66 and 68 was "in exchange for" the satisfaction of the Corporation's debt on these lots. *Finding of Fact No. 8.* This unchallenged finding of fact is a verity on appeal.

Nothing in the cases cited by the Thompsons changes the fact that the Hansons' assumption and satisfaction of the Corporation's debt is "value" under the UFTA. The Ninth Circuit in *In re Prejean* stated as much unequivocally: "It is undisputed that satisfaction of an antecedent debt that is not time-barred constitutes "value" for purposes of the CFTA." 994 F.2d 706, 707 n.2 (9th Cir., 1993). The *In re Agricultural Research and Technology Group* case is also not on point. In that case fraudulently transferred funds were distributed to limited partners "in respect to their capital contributions." 916 F.2d at 540. The Ninth Circuit held that such

distributions were not in exchange for value because they were made "on account of the partnership interests and not on account of debt or property transferred to the partnership in exchange for the distribution." *Id.* Another case the Thompsons cite, *U.S. v. Brown*, 820 F.Supp. 374 (N.D. Ill.1993), is simply silent on the issue of whether the satisfaction of an antecedent debt constitutes value under the UFTA.

Finally, Plaintiffs' suggestion that *Clearwater v. Skyline Construction Co.*, 67 Wn. App. 305, 835 P.2d 257 (1992), somehow controls the applicability of the statutory offset is unavailing because the statutory offset was not addressed in *Clearwater*. Furthermore, *Clearwater* considered whether to void a conveyance, not whether to hold a transferee personally liable, and accordingly did not cite or discuss either *Deyong* or *Park Hill*. *Id.* at 312.

More importantly, however, the transfer in this case is distinguishable from the transfer in *Clearwater* where the court found "inadequate consideration" supporting the challenged transfer. *Id.* at 323. In *Clearwater*, Lidia Panasiuk, the owner of a construction company, obtained a $234,500 loan jointly in her personal name and in the name of her company. *Id.* at 311. However, the title to the property was erroneously placed in the name of Panasiuk's company, Skyline. *Id.* Skyline, who was facing litigation claims by plaintiffs, later transferred the property to Panasiuk in her personal capacity "for the purpose of

correcting the deed." *Id.* at 311 & 321. But the transfer from Skyline to Panasiuk ***was not in exchange for any new value or for the satisfaction of any existing antecedent debt***. Skyline's loan liability was exactly the same after the transfer to Panasiuk as it was before the transfer. *Id.* at 323. Unlike the Corporation here, Skyline was not relieved of any debt; it merely forfeited the properties. It thus received no "value" as defined by the UFTA because the transfer to Panasiuk was not *in exchange for* any satisfaction of debt. In contrast, in this case the Corporation received antecedent debt satisfaction—a fully recognized "value" under the UFTA—*in exchange for* the properties.

The *Clearwater* court noted, as do the Thompsons in their response, that valid consideration must provide some utility from a creditor's viewpoint. *Id.* In *Clearwater*, Panasiuk's payments on what had continuously been the company's obligation – and what remained the company's obligation *after the transfer* – provided no utility to Skyline's creditors because Skyline remained liable for the full amount of the debt. In contrast, the transfer here benefited the Corporation's creditors because it relieved the Corporation of all liability – to the tune of over $330,000 – associated with Lots 66 and 68. No creditor can say that a debtor's reduction in the amount of its overall debt load is not beneficial to the creditor.

C. The Trial Court's Findings and Conclusions Do Not Support Liability under RCW 19.40.041(a)(2)

The Hansons agree with the Thompsons that the trial court found the transfer of Lots 66 and 68 in violation of RCW 19.40.041(a)(2), which does not require a finding of insolvency. Yet the Thompsons' response discusses only insolvency, and does not discuss whether any evidence supports a finding of liability under RCW 19.40.**041(a)(2)**. This is likely because there is no such evidence, as the Hansons pointed out in their brief. *App. Br. § IV. E.* The Hansons have assigned error to the trial court's findings and conclusions that the transfer violated RCW 19.40.**041(a)(2)**. *Assignments of Error 4 & 6.* The Thompsons have failed to demonstrate the existence of *any* evidence supporting liability under RCW 19.40.**041(a)(2)**.

RCW 19.40.**041(a)(2)(i)** imposes liability for transfers made without a reasonably equivalent value where the transferor was about to engage in a business or transaction for which its remaining assets were unreasonably small. The Corporation's business at the time of the 9/13/00 transfer consisted of nothing more than finishing construction and selling the homes on Lots 62 and 69, which it did, and finishing construction on Lot 61, which it did. Even with respect to Blueberry Farm, which the Corporation eventually lost over a year later, it received an offer to purchase in June 2001 for $1.5 million.[8] The Thompsons, who had the

[8] RP (March 26, 2006), pp. 144-49.

burden of proof by "substantial evidence," introduced no evidence whatsoever to support this finding.

RCW 19.40.**041(a)(2)(ii)** imposes liability for transfers made without a reasonably equivalent value where the debtor intended to incur debts beyond his or her ability to pay as they became due. The only evidence introduced at trial established just the opposite – that the Corporation incurred no new debts after 9/13/00.[9]

D. The Thompsons did not Sustain Their Burden of Introducing Substantial Evidence that the Corporation was Insolvent on September 13, 2000

The trial court found that that the Corporation was insolvent on 9/13/00, but did not expressly conclude that the Hansons violated RCW 19.40.**051(a)**, which requires a finding of insolvency. The Hansons have assigned error to the trial court's finding of insolvency. *Assignments of Error Nos. 3 & 5.*

In Finding of Fact No. 12, which the Hansons challenge on appeal, the trial court found that the Corporation, as of 9/13/00, was routinely not paying its debts when they were due. The UFTA creates a presumption of insolvency for debtors who are generally not paying their debts when due. *RCW 19.40.**021(b)***. But that same section of the UFTA states that the term "debts" does not included secured debts. *RCW 19.40.**021(e)***.

---

[9] RP (March 26, 2001), pp. 153-54.

As the Hansons pointed out in their opening brief, the only evidence introduced at trial of the Corporation's unsecured debts existing on 9/13/00 were some trade payables in the amount of approximately $15,000 and the Thompsons submitted no evidence establishing that those payables were past due. The Thompsons claim that a construction lien to Emerald Services in the amount of $70,000 was unsecured because the claim of lien was not recorded until after 9/13/00. This point fails for several reasons. First, there was no evidence that the Corporation was indebted to Emerald Services in the amount of $70,000. Rather, Emerald Services had a judgment lien in the amount of $3,038.50 that was paid off when Lot 68 was refinanced.[10]

Second, much of the evidence the Thompsons rely upon was never introduced other than in the form of the unverified statements of counsel.[11] Washington Utility did have a construction lien on Blueberry Farm.[12] That claim was secured, however, by virtue of the relation back of its lien to the start of construction, which pre-dated September 13, 2006. *RCW 60.04.061*. The Thompsons' attorney asserted as much at trial.[13]

---

[10] Ex. 4; RP (March 21, 2006), pp. 60-61, 136

[11] RP (March 21, 2006), pp. 74-76

[12] RP (March 21, 2006), pp. 146-47.

[13] RP (March 21, 2006), p. 147 ("lien is secured upon commencement of the property provided it is perfected in the ordinary course.").

Even if one assumes for the sake of argument that the debt to Washington Utility was unsecured as of 9/13/00, Mr. Hanson testified that is was disputed.[14] As Official Comment 2 to the UFTA explains, such considerations weigh against a finding that the Corporation is not paying its debts as they become due.

Finally, even if one assumes for the sake of argument that the construction lien claim of Washington Utility was unsecured as of 9/13/00, the only relevant evidence introduced at trial established that the assets of the Corporation on this date exceeded the amount of the Washington Utility claim.

The Thompsons attempt to demonstrate that the Corporation was insolvent on a balance sheet basis as of 9/113/00 is flawed. The Thompsons state that "it is clear the Trial Court did not believe Mr. Hanson on the issue of insolvency." *Resp. Br. at 14.* But at the conclusion of testimony the trial court indicated that the evidence established that on a balance sheet basis, the Corporation was solvent on 9/13/00: "So as of September 13, it seems from the evidence, that the corporation did have more asset than debt." *RP (March 22, 2006), p. 73.* Thus, even if the Corporation's secured debts existing as of 9/13/00 could have been relied upon to create a presumption of insolvency, the trial court stated that the evidence rebutted this presumption.

---

[14] RP (March 21, 2006), pp. 75-76.

Contrary to the assertions of the Thompsons, Mr. Hanson's testimony as to the value of the Corporation's property as of 9/13/00 was never contradicted. In discussing the Corporation's solvency on a balance sheet basis, the Thompsons in their brief simply assert that the Corporation was insolvent, but do not discuss the evidence that was actually introduced on the subject. They rely solely on the fact that some of the property the Corporation owned on 9/13/00 was lost to foreclosure years later. Even if the court discounted the testimony of Mr. Hanson on the value of the Corporation's assets, the fact remains that the Thompsons introduced no evidence of their own establishing the relative value of the Corporation's assets and liabilities on 9/13/00. They relied exclusively on events occurring years after 9/13/00 to support their assertion that the Corporation's assets had no value on 9/13/00.

E. If the Thompsons are Entitled to Rely Upon Events Occurring Years After 9/13/00 to Establish the Value of the Corporation's Assets as of 9/13/00, Then The Amount of their Judgment Should Likewise Be Limited Under 19.40.081 to the Amount the Hansons Realized From Lots 66 and 68 Years Later As Well.

In arguing that the Corporation was insolvent on 9/13/00, the Thompsons look only to what the Corporation netted out of its assets when they were disposed of years later, rather than comparing the market value to the encumbrances existing on 9/13/00. The Hansons assert that this is an inappropriate and irrelevant valuation methodology that cannot sustain

the Thompsons' burden of proof of demonstrating insolvency by "substantial evidence."

However, if this valuation method is allowed, then the Thompsons would only be entitled to a judgment equal to the amount of money the Hansons themselves realized upon disposing of Lots 66 and 68 in 2003 and 2004, because, under the Thompsons view of valuation, that would represent the value of those lots when they were transferred on 9/13/00. RCW 19.40.**081(b)** specifies that a creditor is only entitled of a judgment in the amount of its claim, or the value of the asset transferred, *whichever is less*. The evidence established that the Hansons lost Lot 68 to foreclosure in 2003 and thus realized no money from it.[15] As for Lot 66, the Hansons sold that lot in 2004 for $238,500.[16] They had debt against it of at least $184,000.[17] So under the Thompsons proposed valuation method there was only $54,500 in value in that lot at the most. But the Thompsons' proposed valuation method also requires consideration of all of the transaction costs incurred in selling the lot to determine what the Hansons actually "cashed out" of the sale. That evidence was never introduced. If the Thompsons valuation method is to be accepted in evaluating the Corporation's insolvency on 9/13/00, the same method

---

[15] Ex. 24

[16] Ex. 9.

[17] Ex. 4.

must be employed to determine the value of the asset transferred. Thus, a remand would be required to determine the amount of money the Hansons realized from the sale of Lot 66 and a judgment entered for that amount.

The foregoing illustrates the folly of the Thompsons' attempt to value the Corporation's assets on 9/13/00 by looking at the amount of cash realized years later after the deduction of transaction expenses from the sale of individual assets. The fact of the matter is that the Corporation had sufficient assets on 9/13/00 to satisfy the Thompsons' $30,000 claim. That the Thompsons sat on their hands and did nothing to secure their claim pre-judgment is no legal or equitable justification for imposing personal liability on the Hansons.

DATED this 18th day of June, 2007.

TOUSLEY BRAIN STEPHENS PLLC

By _____

Chase C. Alvord, WSBA #26080
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
206.682.5600

Attorneys for Appellants Paul and Jeannine Hanson

CERTIFICATE OF SERVICE

I, Jeanne Perrin, hereby certify that on the 18th day of June, 2007, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

Douglas R. Cloud Law Offices of Douglas R. Cloud 901 South "I" Street, Suite 101 Tacoma, WA 98405 Attorney for Plaintiff	☒ U.S. Mail, postage prepaid ☐ Hand Delivered via Messenger Service ☐ Overnight Courier ☐ Facsimile
Court of Appeals One Union Square 600 University St Seattle, WA 98101-1176	☒ U.S. Mail, postage prepaid ☐ Hand Delivered via Messenger Service ☐ Overnight Courier ☐ Facsimile

I certify under penalty of perjury under the laws of the United States and the state of Washington that the foregoing is true and correct.

EXECUTED this 18th day of June, 2007, at Seattle, Washington.

Jeanne Perrin